

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re I.J., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

I.J.,

Defendant and Appellant.

A151668

(Contra Costa County
Super. Ct. No. JI300116)

I.J., who was born in October 1999, appeals from a June 2017 disposition order committing him to the Department of Juvenile Justice or “DJJ.” I.J. challenges the sufficiency of the evidence to support the juvenile court’s jurisdiction and placement findings, and further contends he is entitled to a new hearing because he was denied the effective assistance of counsel and the prosecutor committed misconduct. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

In February 2013, the Contra Costa District Attorney filed an original wardship petition charging then 13-year-old I.J. with misdemeanor sexual battery by restraint (Pen. Code, § 243.4, subd. (a)),¹ and misdemeanor battery on school, park or hospital property (§§ 242/243.2, subd. (a)(1)). The offenses were allegedly committed the previous May

¹ Statutory references are to the Penal Code unless otherwise indicated.

against two girls. According to witness reports, I.J. slapped the right breast of one victim, and when the girl's friend intervened he punched her in the face. Following issuance of a bench warrant for his arrest, I.J. appeared at a jurisdiction hearing where he admitted a charge of disturbing the peace by fighting (§ 415, subd. (1)) in exchange for dismissal of the more serious charges.

In May 2013, I.J. was declared a ward of the court and placed on probation. Because this was I.J.'s first sustained offense, the probation department did not consider an out-of-home placement, but it expressed multiple concerns, including that this was not the first time I.J. had been referred to the department for committing sexual battery; I.J. and his mother were dishonest about the current incident; and mother appeared to condone I.J.'s actions. Also, the family was less than honest about I.J.'s performance at school, where he had poor grades, poor attendance and received more than 50 disciplinary referrals during a 15-month period.

In 2014, I.J. violated probation by possessing marijuana at school, incurring too many unexcused absences or tardies, and failing to complete court-ordered community service. The consequences for these violations included periods of home supervision, and a court-ordered drug treatment program. When I.J. incurred another violation for poor school attendance in March 2015, the court ordered him to serve four weekends in juvenile hall, although it provided an incentive that if I.J. had perfect school attendance during a given week he would not have to serve the following weekend. I.J. did not have perfect attendance and had to be arrested for failing to appear at juvenile hall.

In November 2015, I.J. was charged with additional probation violations for violating juvenile curfew by being out at 1:20 a.m.; failing to report a police contact; being suspended from school; and failing to complete community service hours. After denying the violations, I.J. failed to appear at the next scheduled hearing, necessitating issuance of another warrant. At a hearing after I.J.'s arrest on the warrant, the department reported that I.J. was a high school sophomore who received poor grades, incurred unexcused tardies and absences, and was disciplined multiple times throughout the school year. He was involved in two additional incidents in September 2015 that did not result

in charges due to insufficient evidence. One incident pertained to a stolen bike, and the other involved a physical altercation in front of the school that was recorded and shared on social media, which showed that I.J. grabbed a female by her hair while another person kicked and punched her.

In January 2016, following issuance of another arrest warrant, I.J. admitted some of the November 2015 probation violations. He was released to his mother and continued on home supervision after the terms of his probation were modified to prohibit gang association, which had become another serious concern. The department reported that I.J. had adopted the moniker “Lil Red” and claimed association with several gangs, including the Broad Day Killers (BDKs), “one of the most violent criminal street gangs in the city of Antioch.” During an interview at the probation office, I.J.’s mother acknowledged that she was aware I.J. associated with BDK members, but she did not consider him to be a gang member, explaining that it was “ ‘more about family and where you are from.’ ”

In February 2016, the Contra Costa County District Attorney filed a supplemental wardship petition charging I.J. with violating section 245, subdivision (a)(4) (section 245(a)(4)) by committing an assault with force likely to produce great bodily injury upon the person of Derrick W. The charge arose out of an incident outside a Burger King in Antioch. The victim’s mother reported to police that her son was “jumped” by a group of people in the parking lot. Derrick identified I.J. as one of his attackers and provided a link to a cellphone video of the fight that was posted on social media. Derrick’s mother told police that I.J.’s mother was also involved in the fight and appeared in the video.

In a report filed with the court, the probation department provided the following summary of the Burger King fight depicted on the cellphone video: “Upon viewing the video of the assault, [I.J.], his younger brother, older brother and mother were identified as having engaged in a physical altercation with the victim on January 13, 2016. The video depicted eight to ten males surrounding the victim and the minor’s older brother, [E’C.M.], instigating the fight and yelling, ‘Get on this nigga, Redd.’ It should be noted that ‘Lil Redd’ is the minor’s moniker or nickname. The minor is seen in the video

walking around with no shirt on and is heard saying to the victim, ‘I wanna fight you.’ The minor’s mother is then seen asking the victim and the other boys, ‘Are you fighting? Are you fighting?’ She then walks over to the minor and says, ‘Come on, come on, go[] get em.’ A fight breaks out and the minor’s older brother [E’C.] punches the victim and knocks him unconscious in the middle of the Burger King parking lot. [The minor’s] younger brother . . . is seen walking up to the unconscious victim and kicking the victim in the face. The minor is then seen walking up to the victim and stomping on his head, as the victim lay motionless in the parking lot. As the minor does this, a female voice is heard yelling, ‘Ooh Redd.’ A person from the crowd is then seen rushing to the victim’s aid, dragging him up onto the curb. The minor’s mother . . . is seen walking back and forth during the assault and after the victim is pulled onto the curb [she] is seen walking up to the victim and yelling, holding a metal object in her hand. [The mother] is later seen waving this metal object around as she is yelling.”

The department reported that Derrick W. was vague about the incident and reluctant to cooperate with police because he did not want to be a snitch. But he did say that I.J. had a problem with him because he was from Central Richmond and that I.J. became upset with him after he made a comment about “Mad Max” from North Richmond who had recently died. The victim also reported that he thought I.J.’s mother had a gun in her hand during the fight.

The department interviewed I.J. and his mother about the Burger King incident. I.J. admitted he participated in the fight even though he was on home supervision at the time. I.J.’s mother also acknowledged that she participated; some boys said they wanted to fight I.J., so she told her sons to get out of the car and fight. She explained that the other boys disrespected her by making comments about her dead cousin Mad Max, so she told her sons to defend their dead cousin. She also acknowledged that she held a knife behind her back during the incident and threw punches at individuals she knew were juveniles.

In March and April 2016, the court held a combined contested jurisdiction hearing on I.J.’s supplemental petition and an original wardship petition charging I.J.’s younger

brother with assaulting Derrick W. Following an evidentiary hearing, the court sustained the charges as to both boys. On April 19, the court continued I.J.'s wardship pursuant to the supplemental jurisdictional finding, removed him from the custody of his mother and committed him to the Youthful Offender Treatment Program (YOTP) for a period not to exceed maximum custody time of 4 years and 30 days, with 92 days of credit for time served.

On April 13, 2017, the juvenile court held a hearing to review I.J.'s progress in the YOTP. The department reported that I.J. struggled during his first five months in the program; he violated behavior rules, was disrespectful, and instigated a physical altercation with another resident. But, in early October, his behavior changed significantly after he was informed that his mother had suffered a heart attack while she was in jail for her role in the Derrick W. assault. Thereafter, I.J. consistently received positive behavior reports from staff and in the classroom, and he completed all required treatment. The department recommended that the court set aside I.J.'s YOTP commitment and continue his wardship subject to home supervision. The court adopted the recommendation and ordered that I.J. was to be placed temporarily in the home of his grandmother in Vacaville, until his mother was released from custody.

On April 19, 2017, I.J. disabled his GPS tracking device and left his grandmother's home. His whereabouts were unknown until May 8, when he was arrested in Contra Costa County after patrol officers detained him for speeding. According to a probation department report about the incident, when officers activated their overhead lights to conduct a traffic stop, I.J. fled but eventually he was stopped at a housing project in North Richmond. He gave officers a false name but was identified with a fingerprint reader. The car he was driving had been reported stolen by the grandfather of one of two passengers.

After I.J. was taken into custody, he was interviewed by a probation officer. He declined to discuss his arrest for vehicle theft, disobeying a lawful order, giving false identification and receiving stolen property. But he reported that he removed his GPS device and left his grandmother's home because he was upset by news that his mother

had suffered additional heart problems. He said that he went to stay with a friend in Richmond and prior to his arrest he attempted to stay inside the friend's home. The department disputed this claim after discovering a music video published on YouTube on May 10, 2017. The video showed I.J. "throwing up gang signs and standing next to an individual in possession of a firearm with an extended magazine." Another person who was holding a gun in the video was identified as one of the passenger's in the vehicle that I.J. was driving when he was arrested. Known members of the "North Richmond/Swerve Team gang" were also featured in the video. Screen shots of I.J. appearing in the video were attached to the report.

On May 10, 2017, I.J. appeared with counsel and admitted that he violated probation. Before the court accepted this admission, I.J. confirmed that he understood the rights he was giving up and the consequences of his plea, including that he could be placed at the DJJ.

I.J.'s disposition hearing was held over two court sessions on May 24 and June 14, 2017. At its conclusion, the court found, among other things, that I.J. had been tried on probation and failed to reform, and that his welfare required removal from the custody of his parent. The court ordered that I.J. was to be committed to the DJJ for a maximum term of 4 years and 30 days. With credit for time served, he faced a maximum time of confinement of 2 years and 281 days.

II. DISCUSSION

A. The Assault Finding

I.J. first contends there is insufficient evidence to support the jurisdictional finding that he violated section 245(a)(4) by committing a felony assault of Derrick W. "Our review is governed by the same principles applicable to adult criminal appeals.

[Citation.] Our function is 'to determine whether the record contains any substantial evidence tending to support the finding of the trier of fact, and in considering this question we must view this evidence in the light most favorable to the finding.'

[Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the appellant guilty beyond a

reasonable doubt. [Citation.] The test is not whether guilt is established beyond a reasonable doubt, but whether any ‘rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (*In re Muhammed C.* (2002) 95 Cal.App.4th 1325, 1328.)

1. Background

As noted, in March and April 2016, the juvenile court held a contested jurisdiction hearing on the supplemental wardship petition charging I.J. with the felony assault on Derrick W. Initially, Derrick refused to testify at that hearing, but he changed his mind to avoid going to juvenile hall. Derrick was shown a cellphone video recording of the fight at the Burger King parking lot, identified himself as the victim who was attacked by several people, and identified I.J. as one of the people who participated in the fight. Derrick was also shown a surveillance video from the Burger King parking lot, which depicted the same fight. Both videos were admitted into evidence.

Derrick testified that he did not want to testify, and he gave little information about the fight. He recalled that somebody grabbed him, and then he felt someone hitting him, so he started swinging back. He did not see who grabbed him or who hit him, but he acknowledged that he was “knocked out cold.” The next thing he remembered was seeing his mom’s car and getting into it. He testified that he “woke up and got in the car, then [he] blacked out again when [he] was in the car.” Derrick denied experiencing pain resulting from the attack, testifying that “[i]t looked like it hurt, but it really didn’t hurt, you know.” He denied receiving any cuts or bruises, claiming that he only had a partial black eye. He claimed ignorance about the reason for the fight and about most of the people who participated in it. However, when pressed by questions from the court Derrick testified that he was certain that I.J. and his younger brother were the two people depicted in the videos who kicked him when he was passed out on the ground.

2. Analysis

On appeal, I.J. concedes he assaulted Derrick W. but contends there is insufficient evidence that he used force likely to cause great bodily injury.

“Section 245 ‘prohibits an assault by means of force *likely* to produce great bodily injury, not the use of force which does in fact produce such injury. While . . . the results of an assault are often highly probative of the amount of force used, they cannot be conclusive.’ [Citation.] Great bodily injury is bodily injury which is significant or substantial, not insignificant, trivial or moderate. [Citation.] ‘ “The crime . . . , like other assaults, may be committed without infliction of any physical injury, and even though no blow is actually struck. [Citation.] The issue, therefore, is not whether serious injury was caused, but whether the force used was such as would be likely to cause it.” ’ ” (*People v. McDaniel* (2008) 159 Cal.App.4th 736, 748–749.)

Applying these rules here, we affirm the finding that I.J. used force likely to produce great bodily injury. As noted earlier, the cellphone video of the attack was described in detail in a probation report. On appeal, I.J. concedes that description is “largely, though not entirely accurate.” I.J. contends that, contrary to the report, the cellphone video does not show him “ ‘stomping’ on the victim’s head.” Both videos are part of the record on appeal and we have reviewed them. It is not clear from the cellphone video whether I.J. kicked or stomped on Derrick W. or exactly where his blows landed. However, I.J.’s stomping motion and the location of his blows at or near the victim’s head are apparent in the surveillance video. The two videos combined with Derrick’s testimony constitute substantial evidence that after Derrick was knocked out cold on the ground, I.J. kicked him in the head using a stomping motion. This type of conduct would likely cause serious bodily injury.

I.J. acknowledges that kicking an unconscious person twice in the upper body or head was “deplorable,” but he contends the record is “devoid” of evidence that the force he used was likely to cause great bodily injury. Instead, he argues, the evidence shows that Derrick’s only injury was a black eye that healed on its own. When an assault victim has suffered bodily injury the nature and extent of that injury is relevant. (*People v. Beasley* (2003) 105 Cal.App.4th 1078, 1086.) But even if we credit Derrick’s testimony downplaying the severity of his injuries, this factor is not dispositive because, as noted earlier, section 245 can be violated without infliction of any injury. (See also *People v.*

Leonard (2014) 228 Cal.App.4th 465, 486.) Thus, the proper focus is on the nature of the force used by the defendant. (*People v. McDaniel, supra*, 159 Cal.App.4th at p. 748–749.) Here, substantial evidence that I.J. used the force of his body to kick and/or stomp on the head of an unconscious victim who had already suffered multiple blows supports the finding that he used force likely to cause great bodily injury.

B. The Commitment to DJJ

I.J. next contends that the juvenile court erred by committing him to DJJ. “ ‘The appellate court reviews a commitment decision for abuse of discretion, indulging all reasonable inferences to support the juvenile court’s decision.’ [Citation.] ‘A DJJ commitment is not an abuse of discretion where the evidence demonstrates a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate.’ ” (*In re A.R.* (2018) 24 Cal.App.5th 1076, 1080–1081.)

1. Background

As noted in our factual summary, I.J.’s disposition hearing was held on May 24 and June 14, 2017. At the first session, the court received a letter from I.J., in which he apologized to the court for violating the rules and outlined positive changes he planned to make in his life.

The court also received the probation department’s May 2017 disposition report. The report summarized the history of I.J.’s case and the circumstances relating to the probation violation he committed 6 days after he was released from YOTP. The report also summarized efforts to provide I.J. with services both in and out of custody. Initially, I.J. was given probation, home supervision, counseling and community service. He committed multiple probation violations and was “repeatedly given chances on Home Supervision.” While in custody at YOTP, he received “intensive treatment,” which included the following programs: Aggression Replacement Therapy; Thinking for a Change; Alcohol and Other Drugs; Boys Counsel; and Jobtech. However, he “failed to practice the learned skills in the community as he disabled his GPS tracking device less than a week after graduating from the program.”

The department reported that I.J. was “technically eligible, but not suitable” for a foster care placement. He posed a significant risk to the community due to his history, which included violent offenses and absconding from home supervision. His behavior issues were not appropriate for treatment in foster care, and yet he did not appear to have specialized treatment needs. Moreover, because he was eligible for reduced credit graduation, his time in foster care could be minimal. The department also screened I.J. for the DJJ and found him eligible.

Based on the “totality” of I.J.’s conduct during the wardship case, the probation department recommended he be committed to DJJ. Factors indicating that DJJ was a better option than a less restrictive placement, included the following: I.J. needed a secure setting as evidenced by his previous sustained offenses and behavior after graduating from YOTP; I.J. would have the opportunity to “build on the treatment received in YOTP” as he would receive “additional cognitive based treatment” and master additional life skills; and I.J. would have “the opportunity to complete Gang Diversion, which is not offered through the YOTP.”

At the May 24 hearing, I.J.’s counsel argued the disposition report was “slanted” because it discussed facts that had not been proven. Counsel argued that in selecting an appropriate placement, the relevant facts pertained to the current probation violation, which was for cutting off an ankle monitor. This was an impulsive, immature act that did not justify the “harsh” response of recommending DJJ. I.J.’s counsel argued for placement in a group home in a rural setting away from Richmond and Antioch. But the district attorney supported the department’s recommendation, pointing out that I.J. had already received behavioral therapy at YOTP, but failed to implement it in a community setting, and that he cut off his ankle monitor within days of his release from YOTP and then went straight back to his gang in North Richmond.

At the end of the May 24 session, the court expressed the opinion that DJJ was an appropriate placement. Preliminarily, the court observed that DJJ would give I.J. the opportunity to complete his education. Then, reviewing I.J.’s case history, the court pointed out that although I.J. was eligible for DJJ after he committed the 2016 felony

assault, the court elected a less restrictive option by placing him in YOTP. The court was also concerned by evidence that within days of completing YOTP, I.J. “disables the ankle monitor,” “goes missing until his arrest . . . while driving a stolen vehicle and attempting to evade police,” and “does show up in a YouTube video that is gang-related.” Despite these circumstances, the court continued the hearing and ordered the department to re-screen I.J. for a possible alternative placement.

At the continued hearing on June 14, the department filed a brief report regarding potential placement options. I.J. had been re-screened, but the outcome was the same; I.J. was technically eligible for foster care until he turned 18 and completed high school, but that placement would not be suitable or appropriate based on his “violence, absconding, and significant risk to the community, even after recently completing the Youthful Offender Treatment Program (YOTP).” The department stood by its “initial recommendation of a commitment to the Division of Juvenile Justice (DJJ).”

I.J.’s counsel renewed his objections to the department recommendations arguing, among other things, that disposition should be tailored to the probation violation, which was removal of an ankle bracelet. Counsel advised the court that while I.J. was detained in juvenile hall pending disposition, his behavior had been exemplary. He further argued that I.J. was better suited to a group home, where he would be removed from triggers that caused him to “relapse into hanging out with negative acquaintances.”

After the matter was submitted, the court stated that it had reviewed I.J.’s entire file, including all of the probation reports. Summarizing I.J.’s history, the court found, among other things, that: I.J. did not adjust well on probation, committing several violations; after the court sustained the felony assault charge, I.J. was eligible for DJJ, but was given YOTP; after his YOTP commitment, I.J. was released on home supervision so he could complete the “after-care program”; within 5 days of his release, I.J. disabled his ankle monitor and went missing for several weeks; he was subsequently arrested while driving a stolen vehicle in which he attempted to evade police; and there was evidence that he participated in a music video with known gang members and stood “next to an individual with a firearm with an extended magazine.”

The court went on to find that I.J. had been afforded services both in and out of custody and had multiple chances on home supervision. He was screened twice for “placement” in foster care, but it was determined he was not suitable. Then the court outlined reasons that DJJ would be an appropriate placement for I.J., including that: he needed a secure setting; he would be able to build on the treatment he received in YOTP; the placement would have a punitive aspect, but the emphasis would be on rehabilitation; he would have access to additional “cognitive-based treatment programs”; he could participate in the gang diversion program, which had not been available in YOTP and was important to his rehabilitation.

After finding it was necessary to remove I.J. from the custody of his mother, the court made the following statement: “The court has considered all local, less-restrictive programs in forms of custody, and is fully satisfied that this is the appropriate disposition at this time and that [I.J.] would better benefit from the various programs provided by DJJ.” Accordingly, I.J. was committed to DJJ for the balance of the 4 year and 30-day period of confinement that was initially imposed when the felony assault charge was found to be true.

2. The Disposition Reports

I.J. first contends that the commitment order must be reversed because the juvenile court relied on disposition reports that were deficient as a matter of law. As support for this claim, I.J. cites two cases, *In re L.S.* (1990) 220 Cal.App.3d 1100 (*L.S.*) and *In re Devin J.* (1984) 155 Cal.App.3d 1096 (*Devin J.*) Both cases are factually inapposite as they involved disposition orders that were made without consideration of a current disposition report. That did not happen here. Nevertheless, these cases provide general guidance about the purpose and content of a disposition report.

“In the juvenile justice area it is the duty of the probation officer to prepare a social study of the minor for every disposition hearing after the juvenile court has found the minor to be a ward of the court pursuant to section 602. [Citations.] The social study shall contain ‘such matters as may be relevant to a proper disposition of the case’ and a ‘recommendation for the disposition of the case.’ ([Wel. & Inst. Code,] § 280.) The

juvenile court shall receive the social study into evidence at the disposition hearing ([Wel. & Inst. Code,] § 706), and ‘In any order of disposition the court shall state that the social study has been read and considered by the court.’ ” (*L.S., supra*, 220 Cal.App.3d at pp. 1103–1104.)

There are no “precise requirements” regarding the content of a disposition report, but “drawing an analogy from what the juvenile court must consider in making a disposition, the probation officer’s report should address, in addition to other relevant and material evidence, the age of the minor, his social, personal and behavioral history, the circumstances and gravity of the offense committed by the minor, and the minor’s ‘previously delinquent history.’ ([Wel. & Inst. Code,] § 725.5.)” (*L.S., supra*, 220 Cal.App.3d at p. 1104.) The report “should also include ‘an exploration of and recommendation to the wide range of alternative facilities potentially available to rehabilitate the minor.’ ” (*Ibid.* quoting *Devin J., supra*, 155 Cal.App.3d at p. 1100.) Finally, some insight into the minor’s problems would be required for the “probation officer to make a recommendation with rehabilitation in mind.” (*L.S.* at p. 1104–1105.)

I.J. argues the disposition reports in his case were deficient under these “legal standard[s]” because they did not contain sufficient information about him for the court to make an informed decision about his needs and what placement would best meet those needs. We disagree. As our background summary reflects, the department did consider and explain why alternative placements would not be appropriate for I.J. It appears to us that I.J.’s real complaint is that he disagrees with the department’s assessment of his needs and its recommendation about how to address those needs without endangering the community. Such a disagreement is not a proper ground for challenging the court’s disposition order.

3. Probable Benefit from the Placement

Taking a different tack, I.J. contends the commitment order must be reversed because the disposition reports do not constitute substantial evidence that I.J. will benefit from placement at DJJ.

An order committing a minor to DJJ must be supported by substantial evidence demonstrating “ ‘a probable benefit to the minor by a [DJJ] commitment.’ ” (*In re Carlos J.* (2018) 22 Cal.App.5th 1, 6 (*Carlos J.*)). This is a statutory requirement as Welfare and Institutions Code section 734 provides that “No ward of the juvenile court shall be committed to the [DJJ] unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the [DJJ].” Moreover, Welfare and Institutions Code section 202, subdivision (b) mandates that delinquent minors “receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances.”

Here, I.J. argues that the disposition reports were the only evidence before the court at the disposition hearing and, as a matter of law, those reports do not support the juvenile court’s probable benefit finding because they do not contain concrete information about the programs at DJJ that will meet I.J.’s needs. I.J. cites *Carlos J.*, *supra*, 22 Cal.App.5th 1 as his legal authority for this claim of error.

First, the disposition reports were not the only evidence before the juvenile court. As discussed, the court reviewed and considered the entire file in this wardship case, which dated back to 2013, as well as I.J.’s letter of apology that was submitted at the hearing.

Second, the issue before the court was not whether a DJJ placement was provably beneficial, but whether the evidence demonstrated a *probable* benefit to the minor from the commitment to DJJ. (Wel. & Inst. Code, § 734; see e.g. *In re Joseph H.* (2015) 237 Cal.App.4th 517, 542.) Pertinent authority holds that “[t]here is no requirement that the court find exactly how a minor will benefit from being committed to DJJ. The court is only required to find if it is probable a minor will benefit from being committed.” (*In re Johnathan T.* (2008) 166 Cal.App.4th 474, 486; see also *In re A.R.*, *supra*, 24 Cal.App.5th at p. 1081 & fn. 3.) Here, the juvenile court identified numerous probable benefits to I.J. including that DJJ would provide: (1) a secure placement, which

was needed because of I.J.’s history of violence and of absconding; (2) the opportunity for I.J. to complete his education even after he turned 18, which he would not have in a foster care placement; and (3) access to different rehabilitative programs than those previously provided at YOTP, including in particular gang intervention services. Contrary to I.J.’s contention here, these findings are substantially supported by the appellate record, which was the record before the juvenile court at the disposition hearing.

Third, this case is not analogous to *Carlos J.*, *supra*, 22 Cal.App.5th 1. In that case, a 15-year-old without a substantial juvenile record was declared a ward after admitting that he committed an assault with a firearm and a criminal street gang enhancement. (*Id.* at p. 4 & 7.) The probation department recommended commitment to DJJ because of the gravity of the minor’s offense and his gang association. A psychologist who evaluated the minor disagreed with the placement recommendation, and opined that a commitment to “Probation Camp” would provide “ ‘both high structure and therapy, to meet [the minor’s] dual needs of addressing his trauma condition and developing . . . pro-social life skills.’ ” (*Id.* at p. 8.) Despite this evidence, the juvenile court committed the minor to DJJ for a seven-year term. The court acknowledged the boy’s young age, mental health issues and minimal record, but ultimately concluded that it could not “get over the seriousness of the offense” he committed. (*Id.* at p. 9.) On appeal, the *Carlos J.* court found there was no substantial evidence in the record of a probable benefit from the DJJ commitment and remanded the matter for a new commitment hearing. (*Id.* at p. 10.) In reaching this conclusion, the court rejected the People’s argument that there was a probable benefit from programs that would be available at DJJ. The court disagreed because there was no “evidence in the record of the programs at the [DJJ] expected to be of benefit to appellant.” (*Ibid.*)

Carlos J. is distinguishable both in terms of the evidence presented at disposition and the specificity of the juvenile court’s analysis. Unlike the *Carlos J.* minor, I.J. has a long history in the juvenile court system, having been declared a ward of the court at age 13. He also has a documented history of absconding, escalating violence, and

deepening connections to gangs, and the court has already tried less restrictive placements. In contrast to the general benefit finding under review in *Carlos J.*, the finding in this case was supported with fact-specific considerations, including that the group home placement requested by I.J.’s trial counsel would not afford him the opportunity to complete his education, or provide him with the secure, structured environment that he appears to need. In other words, the probable benefits of this placement are not limited to the specific programs available at DJJ. And, even as to that factor, the court did identify a specific program—the gang diversion program—that would be a probable benefit of the placement.

Ultimately, it will be up to I.J. whether he benefits from the placement at DJJ. We cannot find on this record that the trial court abused its discretion by sending him there.

4. Effectiveness of Less Restrictive Placements

I.J. argues that even if there is a probable benefit from a DJJ commitment, the “record is devoid of evidence that less restrictive alternatives would have been ineffective or inappropriate.”

“In order to ensure the necessity of a [DJJ] placement, there must be evidence ‘supporting a determination that less restrictive alternatives are ineffective or inappropriate.’ ” (*Carlos J.*, *supra*, 22 Cal.App.5th at p. 6.) “ ‘[T]he statutory scheme contemplates a progressively more restrictive and punitive series of dispositions starting with home placement under supervision, and progressing to foster home placement, placement in a local treatment facility, and finally placement at the DJJ’ or California Youth Authority. [Citation.] Nevertheless, there is no rule that such a placement cannot be ordered unless less restrictive placements have been attempted, and there is no requirement that the juvenile court expressly state on the record the reasons for rejecting less restrictive placements. [Citations.] Rather, ‘if there is evidence in the record to show a consideration of less restrictive placements was before the court, the fact the judge does not state on the record his consideration of those alternatives and reasons for rejecting them will not result in a reversal.’ [Citation.] On the other hand, ‘there must be some evidence to support the judge’s implied determination that he sub silentio

considered and rejected reasonable alternative dispositions.’ ” (*In re Nicole H.* (2016) 244 Cal.App.4th 1150, 1159.)

In this case, after twice considering alternative placements, the juvenile court found that a less restrictive placement would be ineffective or inappropriate because, among other things, less restrictive placements had already been tried to no avail. This finding is supported by substantial evidence. After I.J. did not perform well on probation, he was given multiple opportunities on home detention. He was provided a special incentive to avoid weekends at juvenile hall, which he also failed to utilize, forcing the court to issue yet another warrant for his arrest. Then he committed a felony and was provided with extensive services while in YOTP. Within days of being released from YOTP, I.J. cut off his GPS monitor and absconded from a relative placement, returning to North Richmond where he quickly renewed his gang associations and was arrested for speeding, evading police and driving a stolen car.

I.J. concedes on appeal that a foster care placement in the Bay Area would not be appropriate in light of his history, but argues the court erred by failing to consider “more distant rural foster care placements, far away from the Richmond gangs.” The record shows that the juvenile court did consider that proposal, but rejected it. Its determination that I.J.’s delinquent behavior and need for rehabilitation could not be addressed adequately by such a simple change of environment is supported by this record, which shows that after I.J. received intensive services at YOTP and was released to his grandmother’s home in another county, he had no difficulty absconding and making his way back to the “Richmond gangs.”

C. I.J.’s Ineffective Assistance of Counsel Claim

As an independent ground for reversal, I.J. contends he was denied the effective assistance of counsel at the disposition hearing. “The due process right to effective assistance of counsel extends to minors in juvenile delinquency proceedings.” (*In re M.V.* (2014) 225 Cal.App.4th 1495, 1528.) Like the criminal defendant, the minor “ ‘bears the two-pronged burden of showing that [his] counsel’s representation fell below prevailing professional norms and that [he] was prejudiced by that deficiency.’ ”

[Citations.] ‘When a claim of ineffective assistance is made on direct appeal, and the record does not show the reason for counsel’s challenged actions or omissions, the conviction must be affirmed unless there could be no satisfactory explanation.’ ” (*Ibid.*)

Here, I.J. contends that his trial counsel performed deficiently by failing to call an expert to testify about the inefficacy of the gang diversion program at DJJ. As support for this argument, I.J. refers this court to studies allegedly showing that the majority of juveniles committed to DJJ are gang members. First, these studies are not in the record or the subject of a request for judicial notice. Second, evidence that many DJJ participants are gang members does not necessarily mean that the gang diversion program is ineffectual. Third, I.J.’s gang affiliation was a constant and growing problem in this wardship case, despite the provision of support services while I.J. was in and out of custody. The DJJ gang diversion program was a new option, and the trial court concluded reasonably that it was one reason a commitment to the DJJ would probably benefit I.J. Thus, nothing in this record suggests that a failure to call an expert fell below prevailing professional norms or would have had any material impact on the commitment decision in this case.

Alternatively, I.J. contends that his trial counsel performed deficiently by failing to provide the court with a full picture of I.J. and his needs, and placements that were available to meet those needs. However, the picture that I.J. draws for us on appeal is based on argument rather than evidence. He urges, for example, that counsel should have argued that I.J. is being improperly punished for his mother’s criminality. But counsel could reasonably have concluded that the juvenile court would not have been persuaded favorably by a 17-year-old’s refusal to accept personal responsibility. I.J. also complains that he was not given a psychological evaluation, but the suggestion he may have mental health problems is speculation.

Moreover, I.J. does not specify adequately what alternative placements should have been presented. The record shows that his trial counsel did identify specific programs, such as a group home in Fresno called Courage to Change, but the court was not persuaded by that proposal. On appeal, I.J. contends that simply identifying an

alternative was not enough; counsel should have presented evidence showing that I.J. qualified for the program and that it would have met his needs. This argument ignores the possibility that I.J. did not qualify for the program or that it would not have met his needs. Regardless, the court made express findings about why foster care placements such as this were not appropriate, which precludes I.J. from establishing that he was prejudiced by this alleged deficiency in his counsel's representation.

I.J. relies on inapposite case law. In *People v. Cropper* (1979) 89 Cal.App.3d 716, an adult drug offender was denied the effective assistance of counsel by a defense attorney who not only failed to make any argument in support of his client at sentencing but advocated against him by agreeing with a probation recommendation to sentence him to prison. Nothing comparable happened here.

I.J. also invokes the general rule that “a defense attorney who fails to adequately understand the available sentencing alternatives, promote their proper application, or pursue the most advantageous disposition for his client may be found incompetent.” (*People v. Scott* (1994) 9 Cal.4th 331, 351.) Of course, disposition orders are very different than sentencing orders in adult cases. “ ‘There is no “sentence,” per se, in juvenile court. Rather, a judge can impose a wide variety of rehabilitation alternatives after conducting a “dispositional hearing,” which is equivalent to a sentencing hearing in a criminal court. [Citations.] In the more serious cases, a juvenile court can “commit” a minor to juvenile hall or to the Division of Juvenile Justice (DJJ), formerly known as the California Youth Authority (CYA).’ ” (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 306.) As discussed, in order to ensure the necessity of a commitment to DJJ, there must be evidence of a probable benefit to the minor and that less restrictive alternatives are ineffective or inappropriate. (*Carlos J., supra*, 22 Cal.App.5th at p. 6.) The record demonstrates that I.J.'s trial counsel was aware of these requirements and argued they were not met, thus providing I.J. with effective legal representation at the disposition phase of this case.

D. There Was No Prejudicial Prosecutor Misconduct

Finally, I.J. contends the prosecutor committed misconduct by urging the juvenile court to view a YouTube music video allegedly made by known gang members. As our factual summary reflects, the disposition report discussed this video because I.J. appeared in it and made gang signs while he stood next to an individual holding a firearm. Moreover, still photographs of I.J. appearing in the video were attached to the report. On appeal, I.J. does not contend this evidence was inadmissible. Instead, he argues that the prosecutor committed misconduct by urging the juvenile court to watch the music video.

Traditional rules of evidence do not apply to the dispositional phase of a delinquency proceeding. (*In re Michael V.* (1986) 178 Cal.App.3d 159, 170 (*Michael V.*); *In re Vincent G.* (2008) 162 Cal.App.4th 238, 244; see also *In re Eddie M.* (2003) 31 Cal.4th 480, 487.) Welfare and Institutions Code section 701, which applies to the jurisdictional phase, provides that “[t]he admission and exclusion of evidence shall be pursuant to the rules of evidence established by the Evidence Code and by judicial decision.” However, the dispositional phase is governed by Welfare and Institutions Code section 706, which provides: “After finding that a minor is a person described in [Welfare and Institutions Code] [s]ection 601 or 602, the court shall hear evidence on the question of the proper disposition to be made of the minor. The court shall receive in evidence the social study of the minor made by the probation officer and any other relevant and material evidence that may be offered.”

Thus, the juvenile court has statutory authority to “receive and consider otherwise inadmissible evidence at the disposition hearing so long as it is relevant and material to the disposition issue.” (*Michael V.*, *supra*, 178 Cal.App.3d at p. 170.) In *Michael V.*, for example, it was proper for the juvenile court to consider evidence at the disposition hearing that had been illegally obtained and ordered suppressed at an earlier phase of the proceeding. (*Ibid.*) And the *Vincent G.* court did not err by considering hearsay evidence at the disposition hearing, which would not have been admissible during the jurisdictional phase of that case. (*Vincent G.*, *supra*, 162 Cal.App.4th at p. 170.)

In light of these settled rules, we are not persuaded that the prosecutor's invitation for the juvenile court to view the YouTube video was beyond the pale. Indeed, I.J. provides neither authority nor analysis supportive of his prosecutor misconduct theory.

I.J.'s strongest point is that it is always improper for a trial court to view evidence outside the courtroom. (Citing *People v. Jackson* (1990) 218 Cal.App.3d 1493 (*Jackson*).) In *Jackson*, the appellate court found that a magistrate's ex parte view of a crime scene was improper because "[t]o permit a judge to base a finding, even in part, upon an ex parte view of the crime scene would sanction the impermissible taking of evidence outside of court without the presence of the parties and counsel." (*Id.* at p. 1505.) However, the *Jackson* court did not find that a view of the crime scene was irrelevant or improper, but only that the magistrate committed a nonprejudicial error by failing to comply with statutory procedures for taking that evidence. (*Id.* at p. 1506) By a parity of reasoning, the prosecutor in this case should not have encouraged the juvenile court to go on the internet and view the music video described in the probation reports. However, nothing in this record indicates that the court accepted the prosecutor's invitation. Taking I.J.'s theory one step further, even if the court had viewed the video, it would have been largely redundant of the probation report, which was already before the court, and which described the video and included still shots from it. Under these circumstances, the prosecutor's remarks were harmless under any standard.

III. DISPOSITION

The juvenile court order committing I.J. to the DJJ is affirmed.

TUCHER, J.

WE CONCUR:

POLLAK, P. J.

STREETER, J.